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HOUSE OF REPRESENTATIVES  
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Insurance and Real Estate Committee Public Hearing 3-3-11  
H.B. No. 6471: An Act Prohibiting Most-Favored Nation Clauses in Health Care Provider Contracts

Dear Chairman Megna, Chairman Crisco, Ranking Members Kelly and Coutu and distinguished members of the Insurance and Real Estate Committee,

I testify today in support of HB 6471: An Act Prohibiting Most-Favored Nation Clauses in Health Care Provider Contracts. The adoption of legislation prohibiting the use of most-favored nations ("MFN") clauses in health care contracts is an important element to enhancing insurance competition in Connecticut. Nineteen (19) states have already enacted similar legislation and in addition, the United States Department of Justice has attacked MFN's in litigation which has been commenced. See EXHIBIT I for a listing of other states which have already enacted such legislation. The existence of MFN clauses in health care contracts harms the public in the following ways:

- **Anti-competitive effects of MFNs clauses.** MFN clauses limit competition and allow large insurers to dictate terms and conditions, and perpetuate and enhance market concentration. This is because MFN clauses limit and deter entry to the market by other insurers and payers. Even large insurers, such as United Health Care, have found that they cannot fairly compete in markets where MFN clauses are being used by a competitor.
- **Costs associated with the negotiation and enforcement of MFN clauses.** The existence of MFN clauses in contracts requires hospitals to continuously monitor for compliance, which involves a commitment of resources. Additionally, hospitals must participate in audits initiated by insurers which may reveal pricing by competitors, which in itself is highly anti-competitive. Furthermore, the negotiation process may be more costly due to the amount of diligence and analysis required as a result accepting an MFN provision.
- **Increase in price terms.** MFN clauses affect a provider's ability to negotiate terms with individual plans, and prevent a provider from rewarding competitors who provide better service or less red tape in the processing of claims. Preserving and enhancing the concentration results in higher prices across the board, ultimately affecting the amounts paid by consumers.
- **MFN clauses discourage innovation.** MFN clauses discourage providers from entering into innovative payment methodologies with other insurers. The federal reform legislation and other commentators agree that moving to non-fee for service payment methodologies, which create incentives to improve quality and reduce cost, is a key element of reforming the current system.

Last legislative session, Senate Bill 429, An Act Concerning Most-Favored Nations Clauses in Health Care Contracts was raised in the Public Health Committee. Our then, Attorney General Richard Blumenthal submitted testimony in support of the bill.

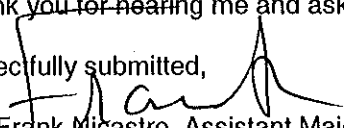
Finally below, is an excerpt from the Ohio 127<sup>th</sup> General Assembly House Bill 125 Joint Legislative Commission on Most Favored Nation Clauses in Health Care Contracts Report 2010, Statement of three (3) Commission Members, pages 30-31 which state:

"Another convincing detail that emerged from the Commission's discussion is that there is a difference of opinion on the MFN issue within the insurance sector. Of the four insurers on the Commission, it appears that only one, Anthem, supports the use of MFNs in health care contracts. The other three – Aetna, Cigna and United Health Care – have all indicated that the existence of an MFN in Anthem's contract with providers has discouraged them (Aetna, Cigna and United Health Care) from entering or expanding in certain segments of Ohio's insurance market.

This may be the most persuasive fact that the Commission has heard in assessing the anti-competitive effect of MFN's. If United Health Care, the nation's largest insurer with \$90 billion in revenue, believes it cannot fairly compete in a market where an MFN is being used, it seems patently obvious that MFN's are in fact anti-competitive because of its negative impact on the suppression of market competition."

I thank you for hearing me and ask you for favorable consideration of this raised bill and am open to any questions.

Respectfully submitted,

  
Rep. Frank Micastro, Assistant Majority Leader  
79<sup>th</sup> House District  
Bristol, CT

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AN ACT CONCERNING MOST-FAVORED-NATIONS CLAUSES IN HEALTH CARE CONTRACTS - EXPLANATORY  
STATEMENT  
EXHIBIT I

- States that have either banned or restricted the use of MFN clauses in health care contracts:
  1. ALABAMA – Reference, Ohio report states they ban MFN
  2. ALASKA – Bans clauses or place restriction on which plans may use MFN clauses
  3. CALIFORNIA – Bans clauses or place restriction on which plans may use MFN clauses
  4. COLORADO – Banned MFN in 2007
  5. IDAHO – Banned MFN clauses in 1998
  6. INDIANA – Banned MFN in 2007
  7. KENTUCKY – Bars insurer with a local market share of more than 20% from putting a MFN clause in contracts with physicians
  8. MARYLAND – Banned MFN in 2006
  9. MASSACHUSETTS – Banned in 2010
  10. MINNESOTA – Bans clauses or place restriction on which plans may use MFN clauses.
  11. NEW HAMPSHIRE – Bans clauses or place restrictions on which plans may use MFN clauses
  12. NEW JERSEY – Reference, Ohio report states they ban MFN
  13. NEW YORK - Reference, Ohio report states they ban MFN
  14. OHIO – Banned for hospitals in 2008
  15. OREGON – Bans practices injurious to free competition
  16. RHODE ISLAND – Bans clauses or place restrictions on which plans may use MFN
  17. VERMONT – Banned MFN in 2009
  18. WASHINGTON – Bans clauses or place restrictions on which plans may use MFN clauses
  19. WEST VIRGINIA – Reference, Ohio report states they ban MFN
- Pending states in litigation
  20. MICHIGAN – United States of America and the State of Michigan VS. Blue Cross Blue Shield of Michigan, complaint filed in October 2010 citing egregious anticompetitive activities